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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,207	02/11/2004	Michael J. Hubbard	OMNO-0003-1	9961

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David G. Burleson
Chief Intellectual Property Counsel
OMNOVA Solutions, Inc.
175 Ghent Road
Fairlawn, OH 44333

EXAMINER

ZIRKER, DANIEL R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,207

Applicant(s)

HUBBARD, MICHAEL J.

Examiner

Daniel Zirker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, applicant's claims were (as was briefly pointed out in the informal Examiner's Interview of December 22, 2005 referred to by applicant) and still are in extremely poor condition, particularly independent claims 1 and 11, and should again be carefully reviewed for both content and their accompanying grammar. Some, but not all of the errors in just claim 1 include the informal "covering product"; the phrase, "a membrane comprising a thermoplastic" should be changed to --thermoplastic membrane--; the phrase "said fabric layer being comprised of a fabric material" should be shortened to just --fabric layer-- or --fabric--, and the apparent method of contemplated use in the last two lines of article claim 1 seems unnecessary; i.e. does applicant ever envision any embodiments where the product would be sold after its added on adhesive surface was adhered to the building structure? In claim 11 it appears that lines 4-6 of the claim are almost presented in a backwards format from the manner in which the (membrane or covering product?) was set forth in claim 1. In claim 12, line 2 it is believed "first membrane" should be --second membrane-- to be consistent with the remainder of the claim. Finally, it is possible that other errors have been overlooked and applicant is urged to carefully review the claims for any additional informalisms.

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3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Venable '785 or '812, each taken in view of WO '866, substantially for the reasons set forth in Paragraph No. 8 of Paper No. 092705, together with the following additional observations. More particularly, applicant argues (Response, pages 17-18) that there is improper motivation to combine either of the primary references with WO '866, but the Examiner must respectfully disagree. Note that all of the references (which are all taken from essentially the same art) at least briefly mention process difficulties associated with the application of flexible membranes to desired substrates such as roofing, etc (e.g. Venable '812, Col 1, lines 7-45; Venable '785, Col 1, line 17- Col 2, line 5, and WO '866, page 1, line 5 – page 3, line 24, particularly page 3, lines 14-24). Additionally, the Examiner further believes that these and related process of making difficulties are general knowledge within the art, as is evidenced by these three citations, which when combined in the manner indicated, it is respectfully submitted, clearly overcome any allegations of hindsight such as applicant has made. Note also that WO '866 (page 1, lines 11-15, page 2, lines 22-25, page 3, lines 4-8, and Fig 2 as described particularly at page 5, lines 28-30) clearly discloses outer layer(s) of dry adhesives used in the same manner as the outer adhesive layers in applicant's claimed structures. Accordingly, it is respectfully submitted that there is more than ample motivation for one of ordinary skill to combine the references in the manner set forth by the Examiner and thereby either form, or clearly render obvious the claimed article and process inventions.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is 571-272-1486. The examiner can normally be reached on Monday - Thursday from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on 571 – 272 - 1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Zirker
Primary Examiner
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A handwritten signature in black ink that reads "Daniel Zirker". The signature is written in a cursive style with a large, stylized 'Z'.